

# BELL & SHIVAS, P.C.

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March 22, 2019

**Via Electronic Filing**

Roxanne Rothschild, Executive Secretary  
National Labor Relations Board  
1015 Half Street SE, Office 5010  
Washington, DC 20570

Re: **In the Matter of Arbah Hotel Corp. et al.**  
**Consolidated Case Nos. 22-CA-197658, 22-CA-203130,**  
**22-CA-205317, 22-CA-205422, 22-CA-209158 and 22-CA-212705**  
**Region 22 – Newark**

Dear Secretary Rothschild:

Please be advised that I represent Arbah Hotel Corporation d/b/a Meadowlands View Hotel (“Arbah” or “Hotel”) in connection with this matter pending before the National Labor Relations Board (“NLRB”) involving Arbah and the New York Hotel And Motel Trades Council, AFL-CIO (“Union”). I write to submit exceptions and brief in support of exceptions to the following areas of the decision rendered by Hon. Lauren Esposito in this matter on December 20, 2018 pursuant to 29 C.F.R. § 102.46:

A) **Ruling on Termination of Employment of Marie Dufort:** Under Section 8(a)(1) & (3) of the National Labor Relations Act, Arbah’s termination of the employment of Marie Dufort (“Dufort”) was justified based upon Dufort’s dishonesty in the form of the coverup she engaged in to mask her insubordination and repeated lies to multiple supervisors about fulfilling her job-related duties pursuant to the Collective Bargaining Agreement (“CBA”) that expired in July 2015. Dufort’s termination was unrelated to her engaging in Union activities.

B) **Ruling on Denying George Padilla Access to Hotel:** Under Section 8(a)(5) of the National Labor Relations Act, Arbah was justified in denying Union representative George Padilla access to the Hotel on August 23, 2017. The Hotel’s actions were justified on several grounds, including the terms of the Settlement Agreement of January 2017 and the CBA. Padilla acted in a belligerent manner and was disruptive to the Hotel environment, failed to provide advance notice of his intention to come to the Hotel and the Settlement Agreement expressly stated that a meeting was to take place as a prerequisite prior to Padilla being able to return to the Hotel. The Hotel’s actions were therefore warranted.

C) **Ruling on Hotel’s Actions to Maintain Health Insurance for Employees:** Under Section 8(a)(5) of the National Labor Relations Act, Arbah did not refuse to bargain with the Union, and in fact undertook reasonable efforts to maintain health insurance for its employees. The Hotel offered alternative and better insurance for its employees at a time when the coverage was about

to lapse. The contract had expired and the Hotel was obligated to fill the gap in coverage in order to prevent a lapse. The Administrative Law Judge's decision was predicated on the finding that the terms of the CBA govern the matter, but the decision ignores the fact that the Hotel had the right to obtain alternate coverage. Because federal law also requires that the Hotel provide coverage for its employees, the holding is inconsistent. Therefore, the Hotel acted within its rights in implementing a healthcare plan with superior coverage for its employees.

Arbah will rely on the attached brief in further support of its exceptions. I appreciate your consideration in this matter.

Respectfully submitted,



David T. Shivas

cc: Hon. Lauren Esposito, NLRB Division of Judges (via email)  
Chevallah Brown-Maynor, Esq., NLRB Region 22 (via email)  
Richard Maroko, Esq., Charging Party General Counsel (via email)